

EXHIBIT H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARGO CONCRETE, INC., etc; et al.,)

Plaintiffs,)

vs.)

LIBERTY MUTUAL FIRE INSURANCE)
COMPANY, etc., et al.,)

Defendants.)

No. C07-04651CRB (ADR)

DEPOSITION OF CRAIG S. PYNES

December 11, 2007

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARGO CONCRETE, INC., a
California corporation;
et al.,

Plaintiffs,

vs.

No. C07-04651CRB(ADR)

LIBERTY MUTUAL FIRE INSURANCE
COMPANY, a Massachusetts
corporation; et al.,

Defendants.

Deposition of CRAIG S. PYNES,
taken on behalf of Defendant Liberty
Mutual Fire Insurance Company, at
1901 Avenue of the Stars, Suite 1600,
Los Angeles, California, beginning at
9:15 a.m. on Tuesday, December 11, 2007,
before SUSAN VAN BOOVEN, Certified
Shorthand Reporter No. 3956.

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1 So I would produce documents or, you know, include a
2 work product document that had to do with the
3 underlying case. It wouldn't capture a legal memo
4 that, you know, was done after the case was filed.

5 Q It wouldn't capture Kern and Wooley attorney
6 work product, whether it was done by you or another
7 attorney, correct?

8 A Right.

9 Q And it wouldn't capture case evaluations and
10 others' communications between the client and Liberty
11 Mutual, right?

12 A Yes.

13 Q But you did do privilege logs in the cases
14 you handled for Liberty Mutual?

15 A Yes.

16 MR. ROXBOROUGH: Objection; asked and
17 answered.

18 THE WITNESS: Some.

19 BY MR. FALZETTA:

20 Q Therefore, to generate those privilege logs,
21 you looked at Liberty Mutual documents and you decided
22 if there were any attorney-client-privileged, work
23 product or other confidential information that
24 shouldn't be produced; is that right?

25 A No, that's not right. What I would look

1 at --

2 MR. ROXBOROUGH: He didn't ask you what you
3 looked at.

4 THE WITNESS: No, that's not right.

5 BY MR. FALZETTA:

6 Q What did you look at to prepare privilege
7 logs in the Liberty Mutual cases that you handled?

8 MR. ROXBOROUGH: Objection; overbroad, calls
9 for a narrative, lacks foundation.

10 THE WITNESS: You would look at the
11 underlying claim files, you would look at, you know,
12 the underlying -- you know, it's an earthquake claim,
13 you look at the documents in the case. Are they, you
14 know, work product or are they, you know, source
15 materials that should be produced?

16 BY MR. FALZETTA:

17 Q Okay. So tell me all the things that would
18 cause you not to produce a document that was otherwise
19 called for in a litigation that you handled for
20 Liberty Mutual while you were at Kern and Wooley.

21 A They would either be something that was work
22 product or it was not relevant, typically.

23 Q What about attorney-client privilege?

24 A If it was attorney-client privilege, I
25 wouldn't produce it, but I don't remember that being a

1 big issue.

2 Q Did you ever withhold a document in a Liberty
3 Mutual case on the grounds that it was attorney-
4 client-privileged?

5 A I'm sure I did.

6 Q And that means you actually looked at the
7 document, read it, decided it was attorney-client-
8 privileged and did not produce it, correct?

9 A Right.

10 Q Okay. And you also said you withheld
11 documents on the grounds of attorney work product,
12 right?

13 A Right.

14 Q And you made the determination that it was
15 attorney work product, correct?

16 A Correct.

17 Q And you, therefore, logged the document and
18 did not produce it to the other side?

19 A Right.

20 Q But you read it?

21 A I would have reviewed it enough to know
22 whether it was attorney-client or work product.
23 Whether I would have read it for substance, not
24 necessarily.

25 Q Okay. What about documents that were

1 she did something like that. There could have been
2 others.

3 Q When did Lisa do that? What case?

4 A I don't remember the name of the case.

5 Q Was it in Tony's Fine Foods?

6 A No way.

7 Q Okay. Did you do a privilege log in Tony's
8 Fine Foods?

9 A Yes.

10 Q Who else worked on a privilege log that you
11 worked on?

12 MR. ROXBOROUGH: Objection; foundation.

13 THE WITNESS: I would be speculating. I
14 don't know.

15 BY MR. FALZETTA:

16 Q Do you know if anyone did?

17 A Could have been Melodie Yee.

18 Q Do you know?

19 A I don't know.

20 Q All right. Do you know if anyone worked on
21 this privilege log that I put in front of you as
22 Exhibit 50, other than you?

23 A Don't know specifically.

24 Q All right. You said earlier that you would
25 not log communications between Kern and Wooley and a

1 approximately three hours preparing the privilege log
2 in Tony's Fine Foods; is that correct?

3 A I think I said I spent three to four hours --
4 I thought it was probably closer to four hours --
5 working on the privilege log and reviewing the
6 documents.

7 Q Okay. Could it have been more than that?

8 A It was such a blip, I don't remember.

9 Q Could it have been twice that much time?

10 MR. ROXBOROUGH: Six to eight hours?

11 THE WITNESS: I honestly don't -- I didn't
12 even remember the case until it came up on a motion.

13 BY MR. FALZETTA:

14 Q Well, your declaration -- do you want me to
15 show you your declaration?

16 A Sure.

17 MR. FALZETTA: Let's mark it as Exhibit 51.

18 (Deposition Exhibit 51 was marked for
19 identification by the deposition officer.)

20 BY MR. FALZETTA:

21 Q It's the Declaration of Craig S. Pynes in
22 Opposition to Liberty Mutual's Motion to Disqualify
23 Roxborough, Pomerance & Nye from Representing
24 Plaintiffs.

25 MR. ROXBOROUGH: Do you have a copy for me?

1 MR. FALZETTA: That's it, that's all I got.

2 MR. ROXBOROUGH: All right. Let's get
3 copies, though, afterwards because it will just speed
4 things up.

5 MR. FALZETTA: Okay.

6 MR. ROXBOROUGH: It's what I did for you
7 guys.

8 MR. FALZETTA: I'm sorry.

9 THE WITNESS: That's how I do depos, too.

10 MR. ROXBOROUGH: So what paragraph do you
11 want him to look at?

12 BY MR. FALZETTA:

13 Q First of all, look at the document and look
14 at your signature and verify for me, please, that that
15 is the declaration that you signed and submitted in
16 this case.

17 A That's my signature on page 8.

18 Q Did you prepare this declaration?

19 A I did not.

20 Q Who prepared it?

21 A Prepared it. Another associate at the firm.

22 Q Who is that?

23 A Michael Phillips.

24 Q How did he prepare it?

25 A I would be speculating.

1 personal knowledge.

2 Do you know if he relied on any of those
3 things in preparing your declaration?

4 A I don't know.

5 Q Did you make any changes to the draft
6 declaration that Mr. Phillips gave to you?

7 A Clerical changes.

8 Q Such as?

9 A Such as if there was a typo or -- nothing of
10 a substantive nature.

11 Q So you agreed with everything that he put in
12 the draft for you to sign?

13 A Yes.

14 Q Okay. Why don't you look at paragraph 5,
15 then.

16 A Okay.

17 Q Does paragraph 5 describe the totality of
18 what you did in the Tony's Fine Foods case when you
19 were at Kern and Wooley?

20 A Yes.

21 Q And is it accurate?

22 A As far as I recall, yes.

23 Q You state at line 22, quote, I spent less
24 than four hours performing this task, end quote. Do
25 you see that?

1 A Yes.

2 Q Okay. You're very definitive there: It's
3 less than four hours, right?

4 A I don't even remember the case, honestly.

5 Q That's not my question.

6 A I mean, honestly, until the motion was filed,
7 the first motion in the Kentucky case, I didn't
8 remember the Tony's Fine Foods case; I didn't remember
9 the name of the case, I didn't remember anything about
10 it.

11 It was only when that got brought up that I
12 vaguely recalled looking over, you know, claim files
13 for personal information in it. I didn't remember
14 spending more than four hours on the task.

15 Q You were very definitive in this declaration.
16 You state, "I spent less than four hours performing
17 this task."

18 MR. ROXBOROUGH: Objection; asked and
19 answered. What's your question?

20 BY MR. FALZETTA:

21 Q Is that your testimony here today, under
22 oath, that you spent less than four hours performing
23 the task described in this paragraph?

24 MR. ROXBOROUGH: Asked and answered. He's
25 already said that, to the best of his recollection,

1 that's what he recalls. If you want to show him the
2 billing records that maybe show more hours than that,
3 knock yourself out.

4 I've been asking for those through the whole
5 motion.

6 THE WITNESS: And I'm telling you, it was a
7 blip. I don't remember.

8 BY MR. FALZETTA:

9 Q That's not my question.

10 A I understand. I don't remember -- I barely
11 remember working on the case, much less working more
12 than four hours on the case.

13 Q So why did you say that you worked less than
14 four hours if you don't really remember?

15 A Because all I remember was rifling through
16 claim files quickly and redacting personal
17 information. And it was just a blip. It wasn't legal
18 work. It was nothing. It was -- it was fill-in time.
19 It was filling billable hour time. That's all it was.

20 Q But why did you pick four hours? And why did
21 you say definitively -- not "to the best of my
22 recollection," but you said, "I spent less than four
23 hours performing this task." Why did you say that?

24 A Because that's what I remembered, Frank.

25 Q Is that your current best recollection today?

1 A As I said, my best recollection is this case
2 was a blip that I remember very little about.

3 Q Is it your best recollection today under oath
4 that you spent less than four hours on --

5 A It could have been more. It could have been
6 more. I honestly don't remember.

7 Q Could it have been double?

8 A Could have been.

9 Q More than double?

10 A Don't know.

11 Q Why didn't you say that in the declaration?

12 A Because I didn't remember the case.

13 Q You stated definitively, "I spent less than
14 four hours performing this task," without any caveats
15 or conditions, right?

16 MR. ROXBOROUGH: Instruct him not to answer.
17 You're argumentative. Take it down a notch, Frank.
18 We had discussion this morning about this. I knew
19 this was going to happen. I understand it -- take it
20 down a notch.

21 BY MR. FALZETTA:

22 Q Is that what happened?

23 A The case was a blip.

24 Q So you don't remember how much time you spent
25 on Tony's Fine Foods, do you?

1 two-minute break. You guys are going way too fast.

2 (Recess.)

3 (Record read.)

4 MR. FALZETTA: We're back on the record.

5 Nick, we had a conversation, before we began,
6 in which I told you that I wanted to mark Craig's time
7 entries from the Tony's Fine Foods case but I wanted
8 your stipulation and agreement that by marking this
9 document, and doing so without even a confidentiality
10 agreement, that I wouldn't be waiving privilege and
11 there would be no subject-matter waiver as a result of
12 me doing so, and you said you would agree with that.

13 Is that correct?

14 MR. ROXBOROUGH: That's correct.

15 MR. FALZETTA: Okay. Let's mark this, then,
16 as Exhibit 52, next in order.

17 (Discussion off the record.)

18 (Deposition Exhibit 52 was marked for
19 identification by the deposition officer.)

20 BY MR. FALZETTA:

21 Q Craig, have you had an opportunity to review
22 Exhibit 52?

23 A Not entirely, no.

24 Q Go ahead, take your time.

25 A Okay.

1 Q All right. First, have you ever seen this
2 document before?

3 A No.

4 Q Do the time entries look familiar?

5 A No.

6 Q Do you have any reason to believe that these
7 time entries by you in the Tony's Fine Foods case are
8 inaccurate?

9 A I don't know, necessarily, that they're by
10 me.

11 Q Oh. Would you enter your own time entries
12 when you worked at Kern and Wooley?

13 A Yes.

14 Q And how would you do that?

15 A I would type them into the computer.

16 Q You would directly type them in?

17 A Uh-huh.

18 MR. ROXBOROUGH: Can you say "yes"?

19 THE WITNESS: I'm sorry. Yes. Sorry.

20 BY MR. FALZETTA:

21 Q And you would enter them into some sort of
22 time and billing system that Kern and Wooley had?

23 A Yes.

24 Q And do you believe that anyone subsequently
25 'modified your time entries?

1 MR. FALZETTA: Well, that --

2 Q That's an interesting statement you're
3 making.

4 A Uh-huh.

5 Q And one I'm sure that they'll be interested
6 in and will be contacting you --

7 MR. ROXBOROUGH: I don't know, it may be
8 privileged.

9 THE WITNESS: It may be privileged, and it's
10 true, so --

11 MR. ROXBOROUGH: Oh, but I'm not here
12 representing Kern and Wooley. I don't care.

13 BY MR. FALZETTA:

14 Q Craig, do you know if any such time-entry
15 increases or decreases were done on your time entries
16 done in the Tony's Fine Foods matter?

17 A I don't recall.

18 Q Okay. All right. Do the time entries on the
19 document that I've marked as 52 look familiar to you?

20 A Generally.

21 MR. ROXBOROUGH: Objection --

22 THE WITNESS: Generally, yes.

23 BY MR. FALZETTA:

24 Q Are they the types of time entries that you
25 would enter in Liberty matters that you worked on?

1 A Generally, yes.

2 Q Is any of the language something that is very
3 Craig Pynes, so to speak?

4 A I don't know what that would mean.

5 Q Well, is there a vernacular and type of entry
6 style that you used in your billing entries?

7 MR. ROXBOROUGH: Well, objection in terms of
8 what he does for our firm. That's not even close to
9 what we do in our firm.

10 MR. FALZETTA: I realize that. I'm sorry, I
11 meant at Kern and Wooley.

12 MR. ROXBOROUGH: Oh, I'm sorry. I'm sorry.

13 THE WITNESS: Generally, it looks similar.
14 It wouldn't necessarily reflect everything that I
15 input, but generally it looks similar.

16 BY MR. FALZETTA:

17 Q Do you have any reason to believe that you
18 did not enter the time entries that are listed in 52?

19 A It looks like there might be some stuff that
20 was added.

21 Q Okay. Tell me what.

22 A Like in parens, where it says "and redaction
23 and segregation of privileged information," back
24 slash, "documents," I don't know if that's something I
25 would -- I don't know that I would use those words.

1 A Less than that.

2 Q Less than two Bekins boxes?

3 MR. ROXBOROUGH: Asked and answered.

4 THE WITNESS: No, I'm not sure.

5 MR. FALZETTA: All right.

6 Let me mark as Exhibit 53 a privilege log in
7 Tony's Fine Foods versus Liberty Mutual Insurance
8 Company, two-page document.

9 (Deposition Exhibit 53 was marked for
10 identification by the deposition officer.)

11 BY MR. FALZETTA:

12 Q Take a look at it and tell me when you're
13 ready for a question.

14 A All right, I'm ready for a question.

15 Q Does this log look familiar to you?

16 A Not really.

17 Q Do you know if you prepared this log?

18 A I would be speculating.

19 Q All right. It's possible that you did, it's
20 possible that you didn't?

21 A It's possible I prepared part of it,
22 possible. I -- I don't recall.

23 Q And you don't remember one way or the other?

24 A Huh-uh.

25 Q Do you recall including documents in the

1 Company as a defendant?

2 MR. ROXBOROUGH: Objection; asked and
3 answered.

4 THE WITNESS: I don't recall.

5 BY MR. FALZETTA:

6 Q And the Ashou case, do you recall the
7 defendant?

8 MR. ROXBOROUGH: Same objections.

9 BY MR. FALZETTA:

10 Q Go ahead.

11 A It was some Liberty entity, I don't remember
12 which.

13 Q Will you look at Exhibit 50, please, in the
14 caption page, or the caption on the letter.

15 A Oh, on the letter? It says "In re Northridge
16 Litigation," which I assume is referring to the
17 earthquake.

18 Q The next line, please.

19 MR. ROXBOROUGH: Looking at the second line
20 here?

21 THE WITNESS: "Raymonda Ashou versus Liberty
22 Mutual Fire Insurance Company."

23 BY MR. FALZETTA:

24 Q Does that refresh your recollection that it
25 was Liberty Mutual Fire Insurance Company as the

1 defendant in the Ashou case?

2 A Vaguely.

3 Q Do you have any reason to believe that your
4 re line in your letter was inaccurate?

5 A No. We treated them all basically like the
6 same entity.

7 MR. ROXBOROUGH: He's not asking you that.

8 BY MR. FALZETTA:

9 Q Why did you treat them all pretty much like
10 the same entity?

11 A It was Liberty. Everything would say
12 "Liberty"; it wouldn't say "Liberty Mutual Fire." It
13 would say "Liberty" or "Liberty Mutual."

14 Q The only distinction you would draw is if it
15 was Wausau or Golden Eagle?

16 MR. ROXBOROUGH: Objection.

17 THE WITNESS: Or a different other carrier.
18 There were other carriers.

19 BY MR. FALZETTA:

20 Q But you don't remember who they were?

21 A No, I don't.

22 Q Do you remember any other bad-faith
23 litigation that you worked on involving a Liberty
24 entity?

25 A I don't remember the specific names. I know

1 you those portions?

2 A Oh, I don't remember those. So many cases
3 ago, I honestly couldn't. I would be completely
4 speculating.

5 Q Okay, don't want you to do that. Do you
6 recall preparing privilege logs in all of the
7 bad-faith cases that you were involved in for Liberty
8 while you were at Kern and Wooley?

9 MR. ROXBOROUGH: Objection; overbroad, asked
10 and answered.

11 THE WITNESS: I don't know about all the
12 cases.

13 BY MR. FALZETTA:

14 Q Do you recall any bad-faith litigation matter
15 that you were involved in for Liberty Mutual where you
16 didn't prepare a privilege log?

17 A I don't recall either way. I just don't
18 remember that I prepared them in every case.

19 Q Okay. All right. Did you have direct
20 communications with Liberty's in-house attorneys and
21 other employees in the Ashou matter?

22 A I don't recall.

23 Q Did you communicate with Michael Gonzalez of
24 Liberty Mutual on the Ashou matter?

25 A I don't recall.

1 Q Did you communicate with Wayne Cupelo,
2 Esquire, in-house counsel of Liberty Mutual, on the
3 Ashou matter?

4 A I don't recall.

5 Q Did you communicate with Nancy McCormick of
6 Liberty's home office legal department on the Ashou
7 matter?

8 A I don't recall.

9 Q Okay. On the other matters that you handled,
10 the bad-faith matters, McLoughlin, Mock, the uninsured
11 motorist case that we talked about, did you prepare
12 pleadings in those cases?

13 MR. ROXBOROUGH: Objection; overbroad, and
14 asked and answered on some of them.

15 THE WITNESS: You have to go case by case.

16 BY MR. FALZETTA:

17 Q Let's take McLoughlin. Did you prepare
18 pleadings in that case?

19 A Yes.

20 Q Did you prepare discovery requests and
21 responses?

22 A Yes.

23 Q Did you prepare research memorandum?

24 A I don't recall.

25 Q Did you research any legal issues?

1 A McLoughlin, I don't remember.

2 Q Did you prepare case evaluations and
3 summaries in the McLoughlin case?

4 A I don't recall.

5 Q Did you prepare case status reports in that
6 case?

7 A I -- I don't recall specifically.

8 Q Did you send correspondence or e-mails to
9 Liberty Mutual employees in that case?

10 A I don't recall.

11 Q Did you have any attorney-client
12 communications with Liberty Mutual in the McLoughlin
13 case?

14 A I just don't remember specifically.

15 Q Did you prepare case summaries for meetings
16 with home office personnel at Liberty Mutual?

17 A I don't recall.

18 Q Did you review and analyze claim file
19 materials and claim notes in the McLoughlin case?

20 A I remember looking at the underlying
21 documents, yes.

22 Q Did you look at claims manual documents in
23 the McLoughlin case?

24 A I don't know about claims manuals; I remember
25 looking at claim files.

1 STATE OF CALIFORNIA

2 COUNTY OF LOS ANGELES

} ss.

3
4 I, Oscar Ventura , hereby certify:

5 I am an employee of Barkley Court Reporters,
6 duly authorized agent for the deposition officer that
7 stenographically recorded the testimony in the foregoing
8 proceeding and authorized to execute this copy
9 certificate.

10 The foregoing is a true and correct copy of
11 the original transcript of the stated proceeding.

12
13 Dated 12/12/07.

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